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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,065	02/25/2004	Nicholas J. Berg	2241.0010000/TGD/JDS	8925
26111 7590 03/13/2007 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER HILL, LAURA C	
			ART UNIT 3761	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20070306

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

**Office Action Summary**

Application No.

10/785,065

Applicant(s)

BERG, NICHOLAS J.

Examiner

Laura C. Hill

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 December 2006 has been entered.

***Response to Arguments***

Applicant's arguments with respect to claims 1-14 over Griffiths (US 5,914,047) have been considered but are moot in view of the new ground(s) of rejection discussed below.

***Claim Rejections - 35 USC § 112***

The 112 rejection has been removed in view of Applicant's amendments dated 18 December 2006.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Walker (US 6,652,495). Walker discloses a system for disposing of body fluids collected during surgery comprising a canister and an apparatus for emptying and cleansing the canister (column 2, lines 59-62) comprising a waste material collection chamber inlet 116 in communication with an outlet of a waste material transfer hose 120 and a collection chamber outlet 104, a vacuum source 102 connected to the collection chamber 70; and a cleaning fluid chamber inlet 28 for receiving the transfer hose inlet so the cleaning fluid is drawn through the transfer hose and the collection chamber by a vacuum source to clean both the hose and the chamber (column 3, line 7-column 4, line 53, figure 2).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US 6,652,495) in view of Griffiths (US 5,914,047). Regarding claim 2 Walker discloses the apparatus as discussed above with respect to claim 1. Walker does not expressly disclose a float. **Griffiths** discloses a self-cleaning apparatus 10 for transferring, collecting and disposing of waste material from a patient (column 2, lines 55-62), comprising: a tube/waste material transfer hose 56a for transferring waste material from a patient to the apparatus (column 7, lines 17-18 and figure 1); a non-disposable waste material collection chamber 30 [Note that although the suction chambers, tube sets, and collection chamber liner 146 may be disposable-see column 5, lines 32-43 and column 11, lines 36-41, the collection chamber 30 itself is non-

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disposable since liquid disinfectant is passed through for repeated use of the chamber] having an inlet in communication with an outlet of the transfer hose 84 (figure 3); a vacuum source 58 connected to waste material collection chamber 30 by a vacuum line [Note the vacuum line is considered to include tubes 50 and 70A in figure 3] (column 7, lines 17-27 and lines 33-34); and a liquid disinfectant reservoir/cleaning fluid chamber 80 (column 7, lines 50-53) being arranged to communicate with and receive the inlet of transfer hose 84 (figure 3) by inserting the inlet of waste transfer hose 84 into the cleaning chamber 80 to permit the cleaning fluid to be transferred to and through the transfer hose 84 and the waste collection chamber 30 to clean the transfer hose and collection chamber (column 7, lines 57-65). Griffiths further discloses float valves 110a, 110b disposed within the vacuum line (figure 3) to close the vacuum line to prevent waste material within collection chamber 30 from being drawn into the vacuum line by the vacuum source 58 when the collection chamber is filled to capacity (column 8, line 65-column 9, line 10). One would be motivated to modify the apparatus of Walker to have a float valve to open and close the vacuum lines since the references both disclose waste transfer and cleaning devices. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Walker, thus providing a float.

Regarding claims 3, 5, 10-11 and 14 Griffiths further discloses treated waste peristaltic discharge pump 34 discharges liquid waste from collection receptacle 30 to empty the receptacle (column 6, lines 59-63).

Regarding claims 4 and 13 Griffiths further discloses electronic control unit/switch 88 that transmits signals through lines 102 to activate disposal pump drive 104 to pump out waste material from the collection chamber (column 9, lines 10-21).

Regarding claims 6 and 12 Griffiths further discloses filter 52 disposed within the vacuum line between vacuum source 58 and floats 110a, 110b (figure 3) to prevent waste from being drawn into vacuum source 58 (column 7, lines 15-17).

Regarding claims 7-8 Griffiths further discloses cleaning fluid chamber 80 is positioned upstream of transfer hose 84 inlet and waste collection chamber 30 to permit the cleaning of the transfer hose and collection chamber (column 7, lines 57-65 and figure 3).

Regarding claim 9 Griffiths further discloses a suction nozzle 44A connected to the inlet of transfer hose 84 (column 7, lines 17-27).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH

LCH

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

*Tatyana Zalukaeva*